# LAND SETTLEMENT BOARD v. MARAIS.

1909. *April* 5. MAASDORP, C.J., and FAWKES and WARD, JJ.

*Principal and agent.—Knowledge binding principal.—Agreement as to water leading.*

Where the L Board and M had purchased two adjoining farms from two brothers, who had come to an agreement whereby the owner of De K—M's farm—had the right to lead water from a dam situated on W—the L Board's farm—and S, who bought the farm W for the L Board and acquired it on land settlement terms, knew of the agreement between the two vendors before he received authority to purchase, *Held*, that no agency was created between S and the L Board prior to the day before the sale; that the knowledge S had acquired before that date did not bind the L Board, and that M had no right to claim the indorsement of the burden on the transfer deeds.

The plaintiffs, the owners of the farm Welgevonden, district Winburg, claimed a perpetual interdict restraining the defendant from leading water from a dam situated on their farm. The defendant, the owner of the adjoining farm De Kuilen, pleaded an agreement, under which he had the right to a servitude, claimed in reconvention a declaration that he was entitled to the benefits of the servitude and an order that the servitude should be indorsed on the transfer deeds of the two farms concerned, and tendered half the costs entailed by the necessary amendments of the deeds. Welgevonden had been purchased by the plaintiffs from one J. J. van Tonder and De Kuilen from his brother, A. J. van Tonder. The vendors had held the two farms in undivided ownership for a number of years. They had mutually agreed as to the division of the two properties, and A. J. van Tonder had exercised prior to and during the existence of this agreement a right of water leading from a dam situated on Welgevonden. At the time of the formal division of the farms no mention had been made

of this right on the transfer deeds, on which the titles of the parties to the action were respectively based, though the burden was referred to in the deed of sale, under which the defendant had purchased De Kuilen. The plaintiffs had purchased Welgevonden for one Sutherland — deceased at the time of the action — under the conditions laid down in the Ordinances dealing with land settlement, and Sutherland had personally made the agreement of sale with J. J. van Tonder. He had lived on Welgevonden before the purchase, and knew of the right exercised by A. J. van Tonder, and subsequently by the defendant.

At the outset the Court held that the onus was on the defendant to show that Sutherland had acted as agent for the plaintiffs, and that the knowledge of the agreement as to the right of water leading he might have had was binding on the plaintiffs as his principals.

Of the documents put in, a telegram and two letters were eventually held to be material to the question of agency. The telegram, dated the 28th November, 1904, addressed by the secretary to the Land Settlement Board to Sutherland, referring to an interview with him, stated that the Government had sanctioned the purchase of the farm Welgevonden at the best price up to a limit of 40s. per morgen for free and undisputed title. A letter, dated the 29th November, confirming this telegram stated that it would be to Sutherland's advantage to buy the farm as cheaply as possible in view of his promise to pay back in cash the following June anything it might cost beyond £2000. The other letter referred to, dated the 29th November, was addressed by Sutherland to the secretary of the Land Settlement Board, and stated that the writer had closed with the owner of the farm Welgevonden for £2800, as would be seen from the enclosed agreement, which read as follows:—

I hereby sell the farm Welgevonden, 1464 morgen, my property, to John Knowles Sutherland for the sum of £2800 to be paid in cash on the 3rd January, 1905. I also have the right to live on the place and to reap the crops I have sown to the 31st July, 1905.

(Signed) J. J. VAN TONDER.

JOHN KNOWLES SUTHERLAND.

*Blaine, K.C.* (with him *De Jager*), for the defendant: For the purpose of purchasing the property Sutherland was the Government's agent. There is no doubt that agency can be created by conduct or subsequent ratification, when the act purports to have been done by the agent on the principal's behalf. The Government ratified Sutherland's action as detailed in his letter of the 29th November and the accompanying deed of sale. That was when the agency was created, *i.e.* the agency to sign the deed of sale. There was no actual agency constituted in September and October, but Sutherland was negotiating with the knowledge of the Board, and consequently the knowledge he acquired during that period was binding on the Board. *Story* gives as the reason why the principal is not bound by what his agent has done before, that the agent might have forgotten. But in this case the agent could not have forgotten, as he saw the leading constantly.

*Dickson* (with him *P. U. Fischer*), for the plaintiffs, was not called upon.

MAASDORP, C.J.: It is unnecessary for us to hear Mr. *Dickson*. We are only going to decide two points. We do not decide whether there was a servitude between the brothers Van Tonder or when negotiations for purchase began. We decide the question of Sutherland's agency and the question whether he had such notice of a servitude as could bind the Land Board. It is a well-known principle of law that information obtained by an agent before he becomes agent is not knowledge which can bind his principal; only knowledge acquired during the existence and within the scope of the agency can bind the principal. The notice which Sutherland had here he admittedly acquired before the 28th November, 1904. We have come to the conclusion that none of the letters put in which bear dates prior to that bear out the defendant's contention that there was an agency before the 28th November, when the Government authorised the purchase. Personally I do not even think that the agency was created by the telegram from the Board to Sutherland on that date. But, taking it for granted that the agency commenced on that date, was

any information obtained by Sutherland between the 28th and 29th, when he signed the deed of sale, besides what he knew before? There is no evidence that he acquired any further information. Van Tonder said first that he had reminded Sutherland of the right of water leading before the agreement, and then he said it was after. I think we may take it that it was not before Sutherland wrote to the Land Board. Did he obtain any information between the 28th and the 29th? He got no information that could bind the Land Board. The deed of sale was signed under peculiar circumstances by Sutherland and Van Tonder, without any special authority being granted, because the letter of the 29th had not gone through, and consequently there was no express authority to sign the deed of sale. However, the Board acted upon and adopted that deed of sale, but nothing beyond its contents. My brother FAWKES is inclined to think that the letter of the 29th, if not the wire of the 28th, would have constituted the agency, but we are agreed that there was no notice of the water leading agreement between the 28th and 29th, which has been proved, that could bind the Land Board. On these grounds judgment will be for the plaintiffs in convention and for the defendants in reconvention with costs.

FAWKES and WARD, JJ., concurred.

Plaintiffs' Attorneys: *Fraser & Scott;* Defendant's Attorneys: *Marais & De Villiers.*